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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

DISPATCHED

Policy and Rules Concerning the)
Interstate, Interexchange Marketplace)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

CC Docket No. 96-61

ORDER AND ORDER SEEKING COMMENT

Adopted: September 12, 1996

Released: September 13, 1996

Comment Date: October 4, 1996

Reply Date: October 21, 1996

By the Chief, Common Carrier Bureau

I. INTRODUCTION

1. American Mobile Satellite Carriers Subsidiary Corp. (AMSC) has filed a *Request for Extension of Compliance Deadline* seeking an extension of at least one year to comply with the Commission's rule implementing the rate integration requirements of Section 254(g) of the Communications Act of 1934, as amended.¹ That rule takes effect September 16, 1996.² We review AMSC's request as one for a waiver under 47 C.F.R. § 1.3. For the reasons indicated below, we grant AMSC a waiver pending further consideration of AMSC's petition.

II. BACKGROUND

2. The Telecommunications Act of 1996 became law February 8, 1996.³ Section 101(a) of the 1996 Act added Section 254(g) to the Communications Act of 1934, which required the Commission to promulgate rules requiring providers of interexchange

¹AMSC Request for Extension of Compliance Deadline at 1, 3, 5 (filed Aug. 23, 1996), *In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61.

²The Commission's Report and Order promulgating its rate integration rule, 47 C.F.R. § 64.1801(b), states that the rule will go into effect thirty days from its publication in the Federal Register. *See In re* Policy and Rules Concerning the Interstate, Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report & Order, CC Docket No. 96-61, FCC 96-331, at ¶ 91 (rel. Aug. 7, 1996) (Report and Order). The Report and Order appeared in the Federal Register August 16, 1996. Implementation of Section 254(g) of the Communications Act of 1934, as Amended, 61 FR 42558 (Aug. 16, 1996).

³*See* Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

telecommunications services to provide such services on a geographically rate averaged, and rate integrated, basis.⁴ The Commission adopted rules and requirements on August 7, 1996, to implement Section 254(g).⁵ Under the Commission's rate integration requirements implementing Section 254(g), interstate interexchange telecommunications service providers must charge their subscribers in all U.S. states, territories, and possessions rates for such services that are no higher than the rates they charge their subscribers in any other U.S. state, territory, or possession.⁶ The Commission requirements implementing Section 254(g) codified existing rate integration policy as applied to the 50 states, Puerto Rico, and the Virgin Islands, but additionally recognized that service to some U.S. territories and possessions was not currently offered on a rate integrated basis.⁷ Based on recommendations from the Guam/Northern Marianas Working Group, which included representatives of the governors of Guam and the Northern Marianas as well as the carriers that provide interexchange service to those points, the Commission determined that carriers serving Guam, the Northern Marianas, and American Samoa could delay achieving rate integration for those points until no later than August 1, 1997.⁸

III. AMSC's PETITION

3. AMSC states that it operates a \$650 million satellite system that provides two-way, mobile voice service capable of reaching land, maritime, and aeronautical customers throughout the United States, including Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands,

⁴See *id.* at sec. 101(a), § 254(g) (stating that within six months of enactment of the 1996 Act, "the Commission shall adopt rules to require that the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange services shall provide such services to its subscribers in each State at rates no higher than the rates charged to its subscribers in any other State.").

⁵See *Report & Order* at ¶¶ 1, 89-90.

⁶See *id.* at ¶¶ 52, 55, 66. Section 64.1801(b) of Title 47 of the Code of Federal Regulations states that "[a] provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each U.S. state at rates no higher than the rates charged to its subscribers in any other state." 47 C.F.R. § 64.1801(b). The Communications Act of 1934, as amended, defines "state" to include U.S. territories and possessions. 47 U.S.C. § 153(40).

⁷See *Report and Order* at ¶¶ 3, 47-48, 52, 55, 66.

⁸See *id.* at ¶¶ 64, 68, 92. The Commission required carriers providing interstate interexchange telecommunication service to Guam, the Northern Marianas, and American Samoa to submit no later than February 1, 1997, preliminary plans to achieve rate integration by August 1, 1997, and to submit final plans no later than June 1, 1997. See *id.* at ¶¶ 68, 71, 92. The Commission required that any rate changes prior to August 1, 1997, by carriers serving those points must be consistent with achieving rate integration by that date. See *id.* at ¶ 68. The Commission directed the Common Carrier Bureau to investigate service arrangements for other U.S. territories and possessions to ensure that the rate integration requirements will be achieved with respect to those points by August 1, 1997. *Id.* at ¶¶ 68, 94.

and coastal waters.⁹ Some of its customers use the service for interstate communication.¹⁰ AMSC currently assesses a surcharge on customers using its services in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.¹¹

4. In support of its request, AMSC states that its surcharge reflects higher power requirements necessary to provide mobile satellite service (MSS) in Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands, and allows it to use its capacity efficiently.¹² AMSC acknowledges that other domestic satellite systems also require more power to serve these points, but contends that whereas fixed satellite service systems can solve this problem relatively inexpensively by installing larger ground antennas, such a remedy is impractical in a mobile environment.¹³

5. AMSC points out that it began operating the first U.S. domestic MSS system earlier this year.¹⁴ AMSC argues that it designed its system and rates in reliance on Commission requirements and approvals,¹⁵ and that rate integration would restrict its ability to manage its power resources and achieve revenue goals.¹⁶ According to AMSC, it currently competes internationally with TMI, a Canadian company that operates a satellite with the same footprint, and Inmarsat, which operates a maritime MSS system that covers Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands.¹⁷ AMSC says it competes domestically with terrestrial service providers, including rural cellular and SMRS, and with satellite services

⁹AMSC Request for Extension at 1, 2, 4.

¹⁰*Id.* at 2.

¹¹*Id.* at 1.

¹²*Id.* at 1, 2-3, 3-4. AMSC says that its satellite design requires twice as much power to serve these points as it does the contiguous forty-eight states. *Id.* at 2-3.

¹³*Id.* at 3.

¹⁴*Id.* at 1, 4.

¹⁵*Id.* AMSC notes that the Commission required it to provide service to Alaska, Hawaii, Puerto Rico, and the U.S. Virgin Islands, *id.* at 4 (citing *In re* Amendment of Parts 2, 22 and 25, Memorandum Opinion, Order and Authorization, 4 FCC Rcd 6041, 6055 (1989)), denied a request to reject or suspend and investigate AMSC's tariff, concluding that it was "not patently unlawful," *id.* at 5 (citing *In re* AMSC Subsidiary Corp. Tariff F.C.C. No. 3, Order, 8 FCC Rcd 2871 (1993)), and approved the satellite design, *id.* at 4-5 (citing *In re* AMSC Subsidiary Corp.: Applications to Modify Space Station Authorizations in the Mobil Satellite Service, Memorandum Opinion and Order, 8 FCC Rcd 4040 (1993)).

¹⁶AMSC Request for Extension at 1, 4.

¹⁷*Id.* at 4.

such as Qualcomm's Omnitraacs.¹⁸

6. AMSC notes that some of its customers use its system for interstate communications¹⁹ but characterizes MSS as a nontraditional service, and states that local and international communications make up much of its traffic.²⁰ According to AMSC, the mobile nature of its service and the large footprint of its system prevent it from distinguishing local and international traffic from interstate calls.²¹ AMSC believes that requiring it to integrate its rates will have little impact on long distance service in Alaska, Hawaii, Puerto Rico, or the U.S. Virgin Islands because MSS serves a unique market and the system's capacity is insignificant compared to interstate traffic in those areas.²² AMSC says it needs time to adapt its service to the rate integration requirements.²³

IV. DISCUSSION

7. Under Section 1.3 of our rules, we are authorized to grant waivers "if good cause therefor is shown."²⁴ As interpreted by the courts, this requires that a petitioner demonstrate that "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."²⁵ AMSC's petition raises significant issues concerning AMSC's ability to comply with our rate integration requirements. We believe that an opportunity for comment from interested parties will serve the public interest by providing a complete record for consideration of AMSC's request. In addition, an extension pending consideration of its request will not unduly impair compliance with our rate integration requirements. We will therefore grant AMSC an interim waiver of 47 C.F.R. § 64.1801(b). AMSC will be permitted to maintain current rates and rate structures pending consideration of its request. We will, however, require that any rate changes AMSC makes pending consideration of its petition be consistent with achieving compliance with Section 254(g) and rate integration requirements.

¹⁸*Id.*

¹⁹*Id.* at 2.

²⁰*Id.* at 2, 3.

²¹*Id.* at 2.

²²*Id.* at 3.

²³*Id.* at 1-2.

²⁴47 C.F.R. § 1.3.

²⁵*Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1966 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).


V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), AMSC IS GRANTED a waiver of 47 C.F.R. § 64.1801(b) pending further consideration of its *Request for Extension of Compliance Deadline* to the extent provided herein.

9. IT IS FURTHER ORDERED that any rate changes AMSC makes pending consideration of its petition must be consistent with achieving compliance with Section 254(g) and rate integration requirements.

10. IT IS FURTHER ORDERED that interested parties may file comments no later than October 4, 1996, and reply comments no later than October 21, 1996.

FEDERAL COMMUNICATIONS COMMISSION


Regina M. Keeney
Chief, Common Carrier Bureau